



# Connection

*To focus on what we can do is the most powerful catalyst for growth.*  
~ Gaur Gopal Das

## Just to Remind You:

- Sept 30 - Challan-cum-statement in respect of TDS u/s 194IA and 194IB for the month of August
- Oct 05 - DIR-3 KY with Rs. 500/- Late Fees
- Oct 07 - Payment of TDS for the month of September 2018.

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## Extension of date for filing of Income Tax Returns and Audit Reports

The due date for filing of Income Tax Returns and Audit Reports for Assessment Year 2018-19 is 30<sup>th</sup> September, 2018 for certain categories of taxpayers. Upon consideration of representations from various stakeholders, the Central Board of Direct Taxes (CBDT) extends the 'due date' for filing of Income Tax Returns as well as reports of Audit (which were required to be filed by the said specified date) from 30<sup>th</sup> Sep-

tember, 2018 to 15<sup>th</sup> October, 2018 in respect of the said categories of taxpayers. However, there shall be no extension of the due date for the purpose of section 234A (Explanation 1) of the I.T. Act, 1961 pertaining to interest for defaults in furnishing return, and the assessee shall remain liable for payment of interest as per provisions of section 234A of the Act.



## Unlisted Public Companies to dematerialize their shares Compulsorily

In exercise of the powers conferred by clause (b) of sub-section (1) of section 29 read with sub-sections (1) and (2) of section 469 of the Companies Act 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the **Companies (Prospectus and Allotment of Securities) Rules, 2014**, namely:-

1. Short title and commencement - (1) These rules may be called the **Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018**.

(2) They shall come into force on the 2nd day of October, 2018.

2. In the **Companies (Prospectus and Allotment of Securities) Rules, 2014**, after rule 9, the following rule shall be inserted, namely:-

**"9A. Issue of securities in dematerialised form by unlisted public companies.-**

(1) Every unlisted public company shall -

(a) issue the securities only in dematerialised form; and

(b) facilitate dematerialisation of all its existing securities in

accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(3) Every holder of securities of an unlisted public company, -

(a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or

(b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialised form before such subscription.

(4) Every unlisted public company shall facilitate dematerialisation of all its existing secu-

rities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

(5) Every unlisted public company shall ensure that -

(a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

(b) it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and

(c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.



(6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

(7) Except as provided in sub-rule (s), the provisions of the Depositories Act 1996' the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 and the securities and Exchange Board of India (Registrars to an Issue and share Transfer Agents) Regulations, 1993 shall apply mu-

tatis mutandis to dematerialisation of securities of unlisted public companies.

(8) The audit report provided under regulation 55A of the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.

(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the

Investor Education and protection Fund Authority.

(10) The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India.

## MCA notifies sections 66 to 70 of Companies (Amendment) Act, 2017

**MCA vide notification dated 12.09.2018 notifies sections 66 to 70 (both inclusive) of Companies (Amendment) Act, 2017 and amended Section 196, 197, 198, 200 and 201 of the Companies Act, 2013.**

In pursuance of its policy of Minimum Government-Maximum Governance and providing Ease of Doing Business to the law-abiding Corporates of this country, the Ministry of Corporate Affairs

(MCA) has notified commencement of important Amendments to the Companies Act.

Now with effect from 12th September, 2018, approval of the Central Government shall no longer be required for increase in the payment of remuneration to the managerial personnel (in excess of 11 per cent of the net profit of a company).

With the issue of this Notification, five Amendments

brought forth to the Companies Act 2013, in the Companies (Amendment) Act, 2017, covering Amendments to Sections 196, 197, 198, 200 and 201 of the Companies Act, 2013, stand effected.

## SEBI (Substantial Acquisition of Shares and Takeovers) Regulations



In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:

1. These regulations may be called the Securities and Ex-

change Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018.

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,

(1) in regulation 2:

(a) in sub-regulation (1), in clause (j), the words "is made" shall be substituted with the following, namely:-

"is required to be made under these regulations"

(b) in sub-regulation (1), after clause (j) and before clause (k), the following clause shall be inserted, namely:-

"(ja) "fugitive economic offender" shall mean an individ-

ual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018)."

(c) in sub-regulation (1), after clause (m) and before clause (n), the following clause shall be inserted, namely:-

"(ma) "listing regulations" means the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015."

(d) in sub-regulation (1), clause (r) shall be substituted with the following, namely:-

"(r) "postal ballot" means a postal ballot as provided for under Rule 22 of the Companies (Management and Administration) Rules, 2014 made under the Companies Act, 2013."

(e) in sub-regulation (2), the words and figures "Companies Act, 1956 (1 of 1956)" shall be substituted with the words and figures "Companies Act, 2013 (18 of 2013)"

(2) in regulation 5A,-

(a) in sub-regulation (1), in the proviso, after the words "detailed public statement", the following words and figures shall be inserted, namely:-

"and a subsequent declaration of delisting for the purpose of the offer proposed to be made under sub regulation (1) will not suffice"

(b) sub-regulation (3) shall be substituted with the following, namely:-

"(3) In the event of failure of the delisting offer made under sub-regulation (1), the open offer obligations shall be fulfilled by the acquirer in the following manner:

(i) the acquirer, through the manager to the open offer, shall within five working days

from the date of the announcement under sub-regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16; and

(ii) shall comply with all other applicable provisions of these regulations.

Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.

Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations."

(3) after regulation 6A and before regulation 7, the following regulation shall be inserted, namely:-

**"6B.** Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company."

(4) in regulation 7, in sub-regulation (2), the words "total shares of" appearing after the words "additional ten per cent of the", shall be substituted by the words "voting rights in".

(5) in regulation 9,-

(a) the words "listing agreement", wherever occurring, shall be substituted by the words "listing regulations".

(b) in sub-regulation (5), in clause (c), in the explanation, the words and figures "subsection (1A) of 81 of the Companies Act, 1956 (1 of 1956)" shall be substituted by the words and figures "clause (c) of sub-section (1) of section 62 of the Companies Act, 2013 (18 of 2013)".

(6) in regulation 10,-

(a) the words "listing agreement", wherever occurring, shall be substituted by the words "listing regulations or as the case may be, the listing agreement."

(b) in sub-regulation (1), in clause (a), after sub-clause (iii) and before sub-clause (iv), the following explanation shall be inserted, namely:-

"Explanation: For the purpose of this sub-clause, the company shall include a body corporate, whether Indian or foreign."

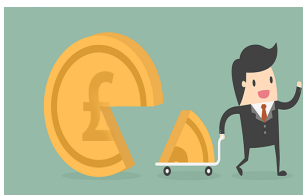
(c) in sub-regulation (1), in clause (h), the words and figures "sub-section (2) of section 87 of the Companies Act, 1956 (1 of 1956)" shall be substituted by the words and figures "sub-section (2) of section 47 of the Companies Act, 2013 (18 of 2013)".

(d) in sub-regulation (4), in clause (c), in the first proviso, in sub-clause (i), the words and figures "section 77A of the Companies Act, 1956 (1 of 1956)," shall be substituted by the words and figures "section 68 of the Companies Act, 2013 (18 of 2013)".

(e) in sub-regulation (4), in clause (c), in the first proviso, in sub-clause (iii), the words and figures "section 77A of the Companies Act, 1956 (1 of 1956)," shall be substituted by the words and figures "section 68 of the Companies Act, 2013 (18 of 2013)".

(7) in regulation 17, in sub-regulation (3), after the pro-





viso the following explanation shall be inserted, namely:-

“Explanation: The cash component of the escrow account as referred to in clause (a) above may be maintained in an interest bearing account, subject to the merchant banker ensuring that the funds are available at the time of making payment to the shareholders.”

(8) in regulation 18,-

(a) in sub-regulation (2), before the first proviso, the following explanation shall be inserted, namely:-

“Explanation:

(i) Letter of offer may also be dispatched through electronic mode in accordance with the provisions of Companies Act, 2013.

(ii) On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the

same shall be provided.

(iii) The aforesaid shall be disclosed in the letter of offer.”

(b) in sub-regulation (4), the words “three working days” shall be substituted by the words “one working day”.

(9) in regulation 20, in sub-regulation (9), in the proviso, the words “three working days” shall be substituted by the words “one working day”.

(10) in regulation 22, in sub-regulation (2), the words “one hundred per cent of the” shall be substituted by the words “the entire”.

(11) in regulation 24, in sub-regulation (1), in the first proviso, the words “one hundred per cent of the” shall be substituted by the words “the entire”.

(12) in regulation 29, in sub-regulation (3), after the words “or the acquisition” and be-

fore the words “of shares or voting rights”, the words “or the disposal” shall be inserted.

(13) in regulation 32, in sub-regulation (1), after the words “issue such directions” and before the words “as it deems fit”, the words “or any other order” shall be inserted.

(14) in regulation 33,

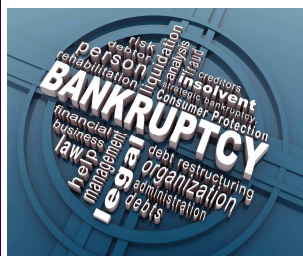
(a) the words and symbol “shall have the power to issue directions through guidance notes or circulars:” shall be substituted by the words “may issue clarifications or guidelines from time to time”.

(b) the proviso shall be omitted

(15) in regulation 35, in sub-regulation (1), the word “stand” shall be substituted by the word “stands”.

## Voting in the Committee of Creditors

The Insolvency and Bankruptcy Code, 2016 (Code) prescribes voting requirements for various approvals by the Committee of Creditors (CoC). For example, section 28 (1) of the Code mandates that the Resolution Professional shall not take any of the actions listed thereunder without prior approval of the CoC. Section 28 (3) further provides that no action listed under section 28 (1) shall be approved by the CoC unless approved by a vote of sixty-six percent of the voting shares. Similarly, section 30(4) of the Code provides that the CoC may approve a resolution plan by a vote of not less than sixty-six percent of voting share of the financial creditors. Further, in terms of regulation 2 (1)(f) of the Insolvency and Bankruptcy Board of India



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), a dissenting financial creditor means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the CoC. In this background, an issue has been raised whether a financial creditor, who is not yet admitted as a member of the CoC, would be considered a dissenting or abstaining financial creditor.

2. The relevant provisions in this regard are:

Section 13 of the Code mandates a public announcement calling for the submission of claims under section 15. Further, section 15 mandates that the public announcement

referred to in section 13 shall contain the last date for submission of claims, as may be specified.

Regulation 12 of the Regulations requires that a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. It, however, provides that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit claim with proof to the Interim Resolution Professional or the Resolution Professional, as the case may be, on or before the ninetieth day of the insolvency commencement date. It further provides that a financial creditor, who submits claim after the stipulated date, shall be included in the CoC from the date of admission of such

claim. And such inclusion shall not affect the validity of any decision taken by the CoC prior to such inclusion.

Section 18 of the Code mandates the Interim Resolution Professional to receive and collate all claims submitted by creditors to him, pursuant to public announcement under sections 13 and 15 of the Code and constitute a CoC. It also mandates him to list assets and liabilities of the corporate debtor as on the insolvency commencement date.

Section 21 of the Code mandates that the Interim Resolution Professional shall, after collation of all claims received against the corporate debtor and determination of financial position of corporate debtor, constitute a CoC. It further mandates that the CoC shall comprise all financial creditors of the corporate debtor. Section 24(6) of the Code provides that each creditor shall vote in accordance with the voting share assigned to it

based on financial debts owed to such creditor.

Regulation 17 of the Regulations require that the Interim Resolution Professional shall file a report certifying constitution of the CoC to the Adjudicating Authority within two days of the verification of claims received under regulation 12.

3. A perusal of the above provisions make it clear that-

The Code read with regulations provide for the manner of collection and verification of claims.

The Interim Resolution Professional constitutes the CoC comprising financial creditors, whose claims have been admitted, as members.

The voting power of a member in the CoC is based on the amount of admitted claim in respect of the financial debt.

A financial creditor, whose claim has not been admitted, is included in the CoC as

member, as and when its claim is admitted.

Inclusion of a financial creditor in the CoC as a member subsequent to constitution of the CoC does not affect the validity of any decision taken by the CoC prior to such inclusion.

The CoC decides the matters by the specified percentage of voting share of members.

4. Thus, a person, who is not a member of the CoC, does not have voting right in the CoC. A

person, who is not a member of the CoC, cannot be regarded as one who has voted against a

resolution plan or abstained from voting.

5. This is issued in exercise of the powers under clauses (aa) and (p) of sub-section (1) of

section 196 of the Insolvency and Bankruptcy Code, 2016.



## Modification in ICAI Council Guidelines

In furtherance of the Announcement dated 11th February 2014 and 2nd July, 2014 informing the members of the modification in the Council Guidelines No. 1- CA (7)/02/2008 dated 8th August, 2008 pertaining to Chapter VI regarding increase in tax audit limit from 45 to 60 and change in applicability of limit from 'financial year' to 'assessment year' respectively, it is hereby informed that the Council of the Institute at its 368th meeting held in August, 2017 decided to exclude the audit conducted under section 44ADA of the Income-tax Act, 1961 for the purpose of reckoning the "specified number of tax audit

assignments" under Chapter VI of the Council Guidelines as section 44ADA of the Income-tax Act, 1961 also contains special provision for computing profits and gains of profession on presumptive basis.

In view of the aforesaid decision of the Council, the fourth proviso to para 6.0 of Chapter VI of the Council Guidelines No. 1-CA(7)/02/2008 dated 8th August, 2008 as contained in Appendix No. (34) to the Chartered Accountants Act, 1949 stands modified as under:-

1. In the fourth proviso to para 6.0, after the words "44AD,"

words "44ADA and" has been inserted.

2. In the fourth proviso to para 6.0, after the words "44AE," words "and 44AF" has been deleted.

Accordingly, audits conducted under Section 44AD, 44ADA and 44AE of the Income-tax Act, 1961 shall not be taken into account for the purpose of reckoning the "specified number of tax audit assignments".



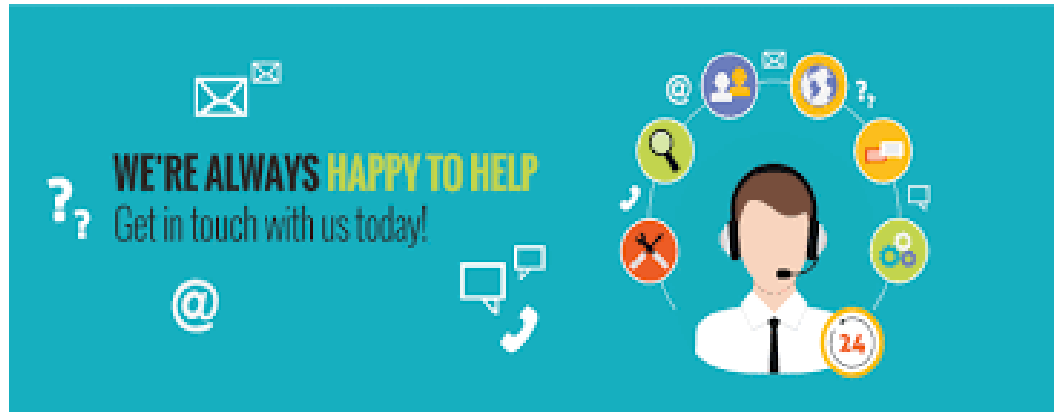
**LLB & CO.**

525, The Summit Business Bay,  
Behind Gurnanak Petrol Pump,  
Near W.E. Highway Metro and  
Cinemax, Andheri (East),  
Mumbai - 400 093

Office No.: 5, Barsana,  
Salasar Brij Bhoomi,  
Near Maxus Mall,  
Bhayandar (West),  
Thane - 401101

Phone: +91 - 22 - 26831036  
+91 - 22 - 49242456  
+91 - 22 - 28040048

E-mail: [info@llbco.in](mailto:info@llbco.in)  
web: [www.llbco.in](http://www.llbco.in)



## **MCA reduces DIR-3 KYC fees to Rs. 500 for 15 Days**

The last date for filing form DIR-3 KYC without fee has expired on 15th September 2018. The process of deactivating the non-compliant DINs has since been completed and their status has been updated as 'Deactivated due to non-filing of DIR-3 KYC'. However, the non-compliant DIN holders may file DIR-3 KYC with a fee of Rs.500 (Rupees Five Hundred Only) from 21st September till 5th October 2018(both days inclusive) to get their DINs reactivated. From 6th October 2018 onwards, a fee of Rs.5000 (Rupees Five Thousand Only) becomes payable for reactivation.

### **Notification**

In exercise of the powers conferred by sections 396,398,399, 403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Govern-

ment hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration Offices and Fees) Fifth Amendment Rules, 2018.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in the An-

nexure, in serial number VII, for the 'note' the following 'note' shall be substituted, namely:-

"Note: During the financial year (2018-2019), fee of rupees five hundred shall be payable from 21.09.2018 to 05.10.2018 and fee of rupees five thousand shall be payable on or after 06.10.2018".



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